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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/886,893

06/21/2001

John Joseph Curro

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01/07/2004

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 01/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/886,893

Applicant(s)

CURRO ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10, 16, 21 and 22 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15, 17-20 and 24-26 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 23 is/are rejected.
- 7) ☒ Claim(s) 3, 7 and 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 09 October 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Petition Decision*.

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on October 9, 2003, has been entered. Claims 1 and 11 have been amended and claims 23 – 26 have been added. Therefore, the pending claims are 1 – 26. Claims 9, 10, 16, 21, and 22 are withdrawn from consideration as being drawn to a nonelected invention.

2. The Affidavit under 37 CFR 1.132 filed October 9, 2003 is insufficient to overcome the rejections based upon Srinivasan et al. or Middlesworth et al. as set forth in the last Office action because: The affidavit did not include all the described figures and therefore was incomplete. Figure 1, described as a bonded nonwoven fabric with a bond site aspect ratio of 1:1, was the same picture as Figure 3, described as a bonded nonwoven fabric with a bond site aspect ratio of 10:1. Further, the Examiner's copy of Figure 5 has poor resolution and the apertures and bond sites, or lack thereof, cannot be clearly discerned from the picture. Thus, the figures could not be compared to each other, or establish that the aspect ratio of the bond site is critical to the nonwoven structure and demonstrate unexpected results for an aspect ratio of at least 3. Finally, it is noted that affidavit is not commensurate in scope with the claims since the claims recite an aspect ratio of at least 3, and the declaration does not have an example where the aspect ratio is actually 3. While these examples might show that bond sites with an aspect ratio of 5, 10, and 30 are critical to producing apertures only at the bond sites, as claimed, there is no evidence that demonstrates this for an aspect ratio of 3, which is what is claimed.

3. The 35 USC 103 rejections based on Srinivasan et al. (5,851,935) and Middlesworth et al. (6,537,930) set forth in section 8 and 9 of the previous Office Action are withdrawn. Both

Srinivasan et al. and Middlesworth et al. fail to teach the aspect ratio of the bond points and the rejection fails to argue this feature would be obvious or even address this issue at all. Therefore, these rejections did not address all the features of the claimed invention and are withdrawn. However, a new rejection is set forth below.

Election/Restrictions

4. Applicant's election of Group I, claims 1 – 8, 11 – 15, and 17 – 20 in the response filed October 9, 2003 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Drawings

5. The drawings submitted on October 9, 2003 have been received. The changes to the drawings overcome the drawing objections with regards to reference number 180 which has been removed and reference number 104 which has been changed to 105 to identify the second supply roll, set forth in sections 5 and 6 of the previous Office Action. Further, the amendment to specification and the removal of the A from 2A, 4A, and 9A in the drawings, as well as the Applicant's arguments (Remarks, page 9) are sufficient to overcome the drawing objections set forth in section 4 of the previous Office Action. Therefore, the corrected drawings are approved.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 21 and 24 – 31 of copending Application No. 09/584,676. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 7 of copending Application No. 09/886,740. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 10 of copending

Application No. 09/886,828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 09/886,830. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 17 – 20, 25, and 26 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3 – 7, 10 – 13, and 21 – 29 of copending Application No. 09/886,831. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in both applications are drawn to a laminate with two outer layers bonded together by discrete bond sites with a substance filling the interior region between the two outer layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1, 2, 4 - 6, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benson et al. (5,628,097).

Benson et al. discloses a nonwoven web which is weakened at a plurality of locations so that when a tensioning force is applied to the nonwoven web, the weakened locations rupture to produce a plurality of apertures (abstract). The nonwoven web can be a single nonwoven web made from bonded carded webs, spunbonded webs, meltblown webs, or multiple layers of these nonwoven webs (column 2, lines 60 - 65).

Benson et al. discloses that the apertured nonwoven web is suitable for use in disposable absorbent articles (column 1, lines 5 - 10). The disposable absorbent product has a composite structure comprising a topsheet, an absorbent core, and a backsheet (column 4, lines 51 - 54). The topsheet comprises the apertured nonwoven web described above (column 7, lines 1 - 5). The topsheet and the backsheet are bonded to each other to form the periphery of the diaper (column 5, lines 1 - 4). The backsheet is a liquid impervious film (column 6, lines 40 - 45) and the absorbent core can include absorbent tissues, fibers, foams, cellulose wadding, sponges, and gelling materials (column 5, lines 25 - 33). Thus, the absorbent layer would be disposed in the space between the first outer layer, the topsheet, and the second outer layer, the backsheet.

Benson et al. teaches that the bond sites are formed by protuberances 116 which can be elliptical, circular, square or rectangular in shape (column 8, lines 28 - 35). As shown in Figure 3, the protuberances and the bond sites produced are narrow and elliptical in shape. While

Benson et al. fails to explicitly teach an aspect ratio of greater than 3, the bond site shown in Figure 3 is long and narrow. Even though one of ordinary skill in the art cannot use the figures to determine the exact size of the bond sites, the picture clearly shows that long and narrow bond sites are used to produce the apertured nonwoven web. Therefore, based on the disclosure and figures taught by Benson et al. it would have been obvious to one of ordinary skill in the art to choose a bond site with an aspect ratio of greater than 3 and a thickness of less than 0.020 inches in the bonded nonwoven fabric taught by Benson et al. since the figure teaches using bond sites which are long and narrow. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose an aspect ratio of greater than 3 and a thickness of less than 0.020 inches, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). Thus, claims 1, 5, and 23 are rejected.

With regards to claims 2, 4, and 6 Benson et al. discloses that the bonded and apertured nonwoven web used as the topsheet can be made from nonwoven laminates such as spunbond/meltblown/spunbond (SMS) laminates instead of a single nonwoven layer (column 7, lines 27 – 35). Thus, the three-layer bonded SMS nonwoven material would correspond to the applicant's invention with the two outer spunbond nonwoven layers, corresponding to the Applicant's first and second webs, and the middle, meltblown layer would be disposed in the void space between the two outer layers. In this case, both the outer spunbond layers would be made from the same material and have bond sites. Therefore, claims 2, 4, and 6 are rejected.

Allowable Subject Matter

14. Claims 3, 7, and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. Claims 11 – 15, 17 – 20, and 24 – 26 are allowed.

16. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach a three-layer structure which is bonded together at the periphery to form two void areas in between the layers and at discrete bond sites which fracture upon application of force, wherein both the void areas are filled with a substance. Additionally, the prior art fails to teach a two-layer laminate which is bonded together at the periphery to form a void area in between the layers and at discrete bond sites, wherein the void area is filled with a fluid or powder substance and upon stretching, the bond sites fracture forming apertures which allow the fluid or powdered substance to be delivered to outside of the laminate.

While Haq et al. (EP 0 112 654) discloses a similar structure having three layers wherein the outer layers are bonded together at a periphery and at bond sites with a liquid or other substance stored between the outer layers, Haq et al. fails to teach or fairly suggest forming the bond sites so that they will fracture and form apertures to deliver the liquid within the laminate. Instead Haq et al. discloses that permeable outer layers are used so that the substance can readily pass between the outer layers. Further, it would not be obvious to weaken the bond sites since that would allow the bond sites to easily fracture when in use as a wipe and decrease the overall strength of the laminate.

Conclusion

Art Unit: 1771

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-0994.

Jenna-Leigh Befumo
December 18, 2003



CHERYL A. HUSKA
PRIMARY EXAMINER